

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 2:18-cv-530
	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT NORFOLK SOUTHERN  
RAILWAY COMPANY’S MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendant Norfolk Southern Railway Company (“NS”), by counsel, states as follows in support of its Motion to File Documents Under Seal. Defendant seeks to file the following documents under seal: Defendant’s unredacted Memorandum in Support of Motion to Exclude Opinions of Professor Howard P. Marvel, and the following Exhibits to Defendant’s Memorandum to Exclude Opinions of Professor Howard P. Marvel: 1-8; 10-18; 20-27; 29-31; 33; 36-63. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties’ use of confidential information produced in this case. ECF No. 79.

1. Paragraph 2 of the Stipulated Protective Order defines “Protected Material” as material containing information that “must or may be protected from disclosure,” including material designated “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” ECF No. 79, ¶ 2.

2. Defendant’s unredacted Memorandum in Support of Motion to Exclude Opinions of Professor Howard P. Marvel and Exhibits 1-3, 7-15, 16-18, 22-24, 27, 29, 30, 32-34, 36-46, 48-53, 55-60, 62, 63 refer or cite to documents, or contain testimony, that have or has been designated

“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by Plaintiff CSX Transportation, Inc. (“CSX”) under the Stipulated Protective Order.

3. These documents and the testimony designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” contain highly confidential and sensitive information relating to CSX’s transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm CSX.

4. These documents and the designated deposition testimony are “Protected Material” under the Stipulated Protective Order. ECF No. 79, ¶ 2.

5. The Stipulated Protective Order requires Defendant to file these documents and the designated deposition testimony under seal. ECF No. 79, ¶ 16.

6. Defendant’s unredacted Memorandum in Support of Motion to Exclude Opinions of Professor Howard P. Marvel and Exhibits 4-6, 15, 19-21, 25-26, 31, 44, 47, 54, 61 refer or cite to documents, or contain testimony, that have or has been designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by NS under the Stipulated Protective Order.

7. These documents and the deposition testimony designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” contain highly confidential and sensitive information relating to NS’s transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm NS.

8. These documents and the deposition testimony are “Protected Material” under the Stipulated Protective Order. ECF No. 79, ¶ 2.

9. The Stipulated Protective Order requires Defendants to file these documents and designated testimony under seal. ECF No. 79, ¶ 16.

10. Defendant’s unredacted Memorandum in Support of Motion to Exclude Opinions of Professor Howard P. Marvel and Exhibit 28, refer or cite to documents, or contain testimony, that have been designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by Defendant Norfolk & Portsmouth Beltline Railroad Company (“NPBL”) under the Stipulated Protective Order.

11. These documents testimony designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” contain highly confidential and sensitive information relating to NPBL’s transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm NPBL.

12. These documents and deposition testimony are “Protected Material” under the Stipulated Protective Order. ECF No. 79, ¶ 2.

13. The Stipulated Protective Order requires Defendants to file these documents under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, Defendant requests that the Court enter the proposed order attached to the Motion to Seal as Exhibit A authorizing and directing Defendant to file the unredacted Memorandum in Support of Motion to Exclude Opinions of Professor Howard P. Marvel and Exhibits 1-8, 10-18, 20-27, 29-31, 33, 36-63 under seal, and directing the Clerk of Court to maintain such exhibits under seal pending further order of the Court.

Defendant also files herewith a Notice of Sealing Motion as required by Local Rule 5(C).

Defendant waives oral argument on this Motion.

Dated: October 13, 2022

Respectfully submitted,

/s/ Alan Wingfield

Alan D. Wingfield (VSB No. 27489)  
Michael E. Lacy (VSB No. 48477)  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
1001 Haxall Point  
Richmond, Virginia 23219  
Telephone: (804) 697-1200  
Facsimile: (804) 698-6061  
Email: alan.wingfield@troutman.com  
Email: michael.lacy@troutman.com

John C. Lynch (VSB No. 39267)  
Kathleen M. Knudsen (VSB No. 90845)  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
222 Central Park Avenue, Suite 2000  
Virginia Beach, VA 23462  
Telephone: (757) 687-7759  
Facsimile: (757) 687-7510  
Email: john.lynch@troutman.com  
Email: kathleen.knudsen@troutman.com

Tara L. Reinhart (*admitted pro hac vice*)  
Thomas R. Gentry (*admitted pro hac vice*)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
Telephone: (202) 371-7000  
Email: tara.reinhart@skadden.com  
Email: thomas.gentry@skadden.com

*Attorneys for Norfolk Southern Railway  
Company*